

Use of Due Diligence in the Wholesale Logistics Modernization Program

Maximizing Free and Open Communication Between Industry and Government

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The Army's Wholesale Logistics Modernization Program (WLMP) will dramatically upgrade the Army's wholesale logistics business processes and supporting information technology (IT), ensuring future and current Army readiness. The WLMP involves converting existing government functions at the Logistics Systems Support Center (LSSC) and the Industrial Logistics Systems Center (ILSC) to the private sector.¹

Specifically, the WLMP contract requires Computer Sciences Corporation (CSC), the winning offeror, to provide business process re-engineering and modernization services for the Army's current wholesale logistics processes and supporting IT. CSC will also provide Sustainment services for the Army's wholesale logistics IT systems that will be transferred to CSC. Finally, all government employees that are displaced by the WLMP will receive a "soft landing." The soft landing requires that CSC provide three-year job offers, consisting of equal or better pay and benefits within the same geographic area. Accordingly, the WLMP acquisition is equivalent to a commercial organization acquiring another corporate entity.

Commercial Business Practice — Due Diligence

Throughout the WLMP acquisition process, a concerted effort was made to maximize free and open communication between industry and government



to the extent permissible by law and regulation. A commercial business practice known as "due diligence" was used among the numerous innovative acquisition practices.

In the commercial world, due diligence has many meanings, ranging from the investigation process done prior to corporate acquisitions, initial public stock offerings, or acquisition of real property to the affirmative legal defense usage. Corporations often conduct due diligence investigations prior to making business decisions such as whether to

acquire another corporation. The investigations often entail analyzing the risks, assets, and liabilities of a project, acquisition, or venture. Many times, the investigation process involves examination of myriad items, pending litigation, financial records, leases, and potential environmental liabilities. Thus, the due diligence investigation may be used as a valuable risk management tool.²

In the context of the WLMP, due diligence was used to provide offerors with a vast array of information regarding the operations of the LSSC and ILSC IT sys-

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tems, and the operations and structural nature of the organizations supporting those IT systems. The WLMP solicitation defined due diligence as a "period of time wherein offerors shall be allowed to examine the organizations and operations associated with the WLMP. This period will allow offerors to assess the program's needs in order to mitigate proposal risks." The decision to use due diligence was made to ensure that offerors fully understood the complexities of

portant to mold the process in order to ensure that it would be manageable from a business perspective and, at the same time, could handle all the offerors' reasonable requests. Generally, the WLMP due diligence process was ongoing and consisted of two major components: an Internet-based virtual library and site visits.

Virtual Library

First, as much information as possible was placed in the WLMP's virtual library, which was up-

dated throughout the WLMP acquisition process. Often, these updates were provided at the request of offerors, via face-to-face exchanges and the Interagency Interactive Business Opportunities Page (IBOP). The IBOP is a Web page that the government uses to electronically procure goods and services. This Web page allows interested contractors to view and download U.S. Army market surveys and government solicitations, as well as messages pertaining to those solicitations and to communicate via the IBOP with Contracting Officers. It should be noted that

the entire due diligence process was shaped through industry input throughout the course of the acquisition.

Site Visits


Second, offerors were informed in the solicitation that only those remaining in the initial competitive range were allowed to conduct site visits to the two affected organizations—LSSC and ILSC—as well as various related organizations such as the U.S. Army Communications-Electronics Command. The purpose of the site visits was to provide offerors a chance to verify and validate information that they had already obtained throughout

the acquisition. During the site visits, offerors were able to question and request information pertaining to the WLMP from government management personnel and subject matter experts. If the information was not readily available by the end of the site visit, but the information request was reasonable and made during the site visit, a record of the requests was kept and an attempt was made to answer those requests in a reasonable period of time after the due diligence site visit period ended.

Throughout the site visit period, the government strove to maintain an equilibrium between providing offerors as much information as possible within the desired acquisition schedule and ensuring that the overall due diligence process remained manageable, without impacting or disrupting the government workforce's mission. Accordingly, the government, with substantial input from industry, formulated written operating procedures for conducting the site visits. The solicitation contained a draft due diligence framework outlining potential rules and site locations, which was provided to offerors for suggestions and comments in order to develop the operating procedures.

To help facilitate the process, these written operating procedures were provided to government due diligence Site Managers, who would oversee the offerors' site visits. The operating procedures covered what information could be provided to offerors, outlined Site Manager guidelines and responsibilities, as well as administration of the site visits. The operating procedures were provided to the Site Managers and also to participating offerors as a part of the government's continuous effort to be as open as possible with offerors during the acquisition process, and to ensure that both sides clearly understood the guidelines for conducting the site visits.

Limiting the number of offerors and the amount of time to conduct the site visits were two of the key parameters necessary to ensure the site visits remained manageable. First, only offerors remaining in the initial competitive range³



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those IT systems and the organizations that supported them. Through the use of due diligence, offerors were able to mitigate their proposal risks, which, in turn, mitigated the government's risk. Since risk management was one of the fundamental building blocks upon which the WLMP acquisition was constructed, due diligence was an integral component of the WLMP's overall risk management plan.

In applying this commercial concept to the WLMP, it was important to tailor it to conform to the Federal Acquisition Regulation and Law. Moreover, it was im-

were allowed to participate in the site visits. The number of attendees an offeror could bring to a location was also limited. Second, the entire due diligence site visit period was limited to a total of 10 days. During that time, offerors were allowed to visit ILSC and LSSC for 10 days and simultaneously allowed one- or two-day visits to other organizations; invariably, that often meant sending different teams simultaneously to a multitude of locations. Generally, the visits were only to be conducted during normal business hours to minimize disruption to the workforce and its mission.

However, despite these constraints, it is important to note that a guiding principle during the site visits was to provide as much information as possible within prescribed limits. The operating procedures contained a checklist of questions for Site Managers to use in determining whether to provide information requested by offerors.

For example, some of the questions on the checklist asked whether the request was reasonable and whether the request for information was prohibited from disclosure for security reasons. Most importantly, the operating procedures emphasized that Site Managers should fully respond to any reasonable information requests provided that the information was available and was not specified as something that should not be disclosed.

Particular attention was paid to ensure that provision of information did not violate any federal regulations or laws. Since the acquisition required the winning offeror to provide job offers to displaced government employees, it was necessary to obtain personnel information. And since the Privacy Act, 5 U.S.C. § 552a (2000) prohibits the release of certain information regarding individual employees, the Site Managers were specifically instructed to only provide the information listed in the operating procedures.

In all other instances, Site Managers were advised to provide answers to reasonable requests, providing the information actually existed and didn't fall into one

of the exceptions such as the requirement not to disclose source selection information. In other words, not disclosing requested information was meant to be the exception, not the rule. Thus, the desire to fully provide to offerors any requested information, within prescribed limitations, was strongly endorsed to the Site Managers. As mentioned previously, an underlying principle of due diligence was to provide offerors with as much information as possible unless an exception applied.

Additionally, it was also important to make certain that the site visits would not create any conflict of interest or post-employment job restrictions per 18 U.S.C. §§ 207-8 (2000) for current employees since the offerors, as part of the soft landing requirements in the solicitation, were required to provide job offers to the displaced government employees. Accordingly, offerors were asked to refrain from extending job offers or accepting resumes from those government employees during this time period.

Site Managers were advised not to disclose proprietary, source selection, or competition-sensitive information in accordance with FAR Part 3 and 41 U.S.C. § 423 (2000). To preclude inadvertent disclosure of this type of information by Site Managers, the operating procedures contained examples of what constitutes proprietary, source selection, and competition-sensitive information.

Finally, since these site visits were part of an overall source selection, equal treatment for all offerors during the visits was essential. Further, operating procedures required that information provided by Site Managers on their own initiative, such as introductory briefs, must be consistent. The availability of locations and the maximum amount of time allotted for the site visits were also the same for all offerors.

Ultimately, it was the offerors who chose, within prescribed limits, a location to visit and the amount of time to spend there. The choice of the location visited and the time usage was wholly at the offerors' discretion; however, all offerors

were given equal opportunity during the visits. A crucial aspect of the site visits was allowing offerors maximum flexibility during due diligence to gather the necessary information.

An Acquisition Reform Initiative That Works

The due diligence process was an integral part of the overall WLMP acquisition. Use of this commercial business practice allowed interested offerors to examine the IT organizations and systems to be transferred to the private sector, thereby allowing them to fully assess the program's needs. With the knowledge gained during due diligence, offerors were able to mitigate their proposal risks. Ultimately, this resulted in the government being able to mitigate its own program risks, by instilling confidence that the selected offerors had a full and thorough knowledge of the program needs.

Editor's Note: The author welcomes questions or comments on this article. Contact him at Keogh@mail1.monmouth.army.mil. The Point of Contact for this subject within the Fort Monmouth Legal Office is Lea Duerinck, (703) 532-3188, DSN 992-3188.

E N D N O T E S

1. The Office of Management and Budget (OMB) Circular No. A-76 cost comparison requirements were waived for the WLMP in accordance with OMB Circular No. A-76 and OMB A-76 Revised Supplemental Handbook. Accordingly, the functions at LSSC and ILSC were directly converted to the private sector without an A-76 competition.
2. Due Diligence itself is an affirmative legal defense often asserted by underwriters, corporation and venture capitalists, and others when being sued by investors, fiduciaries, and shareholders for breach of a fiduciary duty.
3. Pursuant to Federal Acquisition Regulation (FAR) 15.306(c)(2), offerors were informed in the solicitation that in the interest of conducting an efficient competition, it was anticipated that the initial competitive range would consist of no more than three offerors.